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27 **IN THE UNITED STATES DISTRICT COURT**

28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

20 JAMES FABIAN, individually; and on behalf of
21 All Others Similarly Situated;

Case Number: 4:19-cv-54-YGR

22 Plaintiff,

23 v.

24 NANO f/k/a RAIBLOCKS f/k/a HIEUSYS, LLC;
25 COLIN LEMAIEU; MICA BUSCH; ZACK
26 SHAPIRO; TROY RETZER; BG SERVICES,
S.R.L. f/k/a BITGRAIL S.R.L. f/k/a WEBCOIN
SOLUTIONS; AND FRANCESCO "THE
27 BOMBER" FIRANO,

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO THE
FIRST AMENDED COMPLAINT**

28 Defendants.

1 Defendants Hieusys, LLC, Colin LeMahieu, Mica Busch, Troy Retzer, and Vack
2 Shapiro (“Defendants”) hereby answer Plaintiff James Fabian’s (“Plaintiff”) First Amended Complaint
3 as follows:

4 **ADMISSIONS AND DENIALS**

5 1. Defendants admit the allegations in following Paragraphs of the First Amended
6 Complaint, except where noted otherwise: un-numbered introductory paragraph (admitted that the
7 Plaintiff has made allegations, all other statements are denied), 26 (admitted only to the extent that
8 Plaintiff is seeking relief in this matter), 32 (admitted only that Hieusys, LLC is a Texas entity) 33-36
9 (admitted only as to domicile and deny information to form a belief about the other allegations), 68, 69
10 (admitted only to the extent that one of the Defendants appears to have made an online forum post), 72
11 (admitted only to the extent that one of the Defendants appears to have made an online forum post), 81
12 (admitted only to the extent that the Defendants did not charge money for Nano coins and that a faucet
13 was used for distribution), 88 (admitted only to the extent that one of the Defendants appears to have
14 made an online forum post), 89 (admitted only to the extent that one of the Defendants appears to have
15 made an online forum post), 91 (admitted only to the extent that one of the Defendants appears to have
16 made an online forum post), 92 (admitted only to the extent that one of the Defendants appears to have
17 made an online forum post), 94 (admitted only to the extent that one of the Defendants appears to have
18 made an online forum post), 96 (admitted only to the extent that one of the Defendants appears to have
19 made an online forum post) 97 (admitted only to the extent that one of the Defendants appears to have
20 made an online forum post), 98 (admitted only to the extent that one of the Defendants appears to have
21 made an online forum post), 112 (admitted only to the extent that one of the Defendants appears to
22 have made an online forum post), 114 (admitted only to the extent that one of the Defendants appears
23 to have made online forum posts), 116 (admitted only to the extent that one of the Defendants appears
24 to have made an online forum post), 117 (admitted only to the extent that one of the Defendants
25 appears to have made an online forum post), 118, (admitted only to the extent that one of the
26

1 Defendants appears to have made an online forum post), 119 (admitted only to the extent that one of
2 the Defendants appears to have made an online forum post) 121 (admitted only to the extent that one
3 of the Defendants appears to have made an online forum post), 124 (admitted only to the extent that
4 one of the Defendants appears to have made an online forum post), 126 (admitted only to the extent
5 that some of the Defendants participated in online chats), 127 (admitted only to the extent that one of
6 the Defendants appears to have made an online forum post), 129 (admitted only to the extent that one
7 of the Defendants appears to have made an online forum post), 131 (admitted only to the extent that
8 the faucet was closed on October 15, 2017 and the Defendants burned some of the Nano coins), 133
9 (admitted only to the extent that one of the Defendants appears to have made an online forum post),
10 134 (admitted only to the extent that one of the Defendants appears to have made an online forum
11 post), 138 (admitted only to the extent that one of the Defendants appears to have made an online
12 forum post), 139 (admitted only to the extent that one of the Defendants appears to have made an
13 online forum post), 141 (admitted only to the extent that one of the Defendants appears to have made
14 an online forum post), 142 (admitted only to the extent that one of the Defendants appears to have
15 made an online forum post), 143 (admitted only to the extent that one of the Defendants appears to
16 have made an online forum post), 144 (admitted only to the extent that one of the Defendants appears
17 to have made an online forum post), 156, 160 (admitted only to the extent that an Italian court
18 adjudicated a bankruptcy proceeding, employed an expert witness, and made findings), 165 (admitted
19 only to the extent that one of the Defendants appears to have made an online forum post), 166
20 (admitted only to the extent that one of the Defendants appears to have made an online forum post),
21 168 (admitted only to the extent that one of the Defendants appears to have made an online forum
22 post), 169 (admitted only to the extent that one of the Defendants appears to have made an online
23 forum post), 227 (admitted only to the extent that the Plaintiff is incorporating paragraphs by
24 reference), 232 (admitted only to the extent that the Plaintiff is incorporating paragraphs by reference),
25 and 238 (admitted only to the extent that the Plaintiff is incorporating paragraphs by reference).

1 2. Defendants deny the allegations in the following Paragraphs of the First Amended
2 Complaint: 1, 2, 4, 5, 6, 7, 8, 9, 12 (except that the Defendants admit a lawsuit was filed and that the
3 Defendants made statements on April 9, 2018), 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 48, 50,
4 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 70, 71, 73, 74, 77, 78 (except admitted that a
5 Defendant made a statement on social media), 79 (except admitted that a Defendant made a statement
6 on social media), 80, 82, 86 (except admitted that a Defendant made a statement on social media and
7 that the faucet closed on October 15, 2017), 87, 93, 95, 99, 100 (except admitted that Nano coins were
8 listed on Cryptopia), 101, 102 (except admitted that Nano coins were listed on Mercatox), 104, 105,
9 106 (except admitted that Firano made a statement), 107, 108 (except admitted that Firano made a
10 statement), 109 (except admitted that a Defendant appears to have made a social media post), 110,
11 111, 113, 115, 120, 122, 123, 128, 130, 135, 136, 137, 145, 150, 152, 153, 155, 159, 161, 162, 163,
12 164, 167, 170, 171 (except admitted that Firano made a statement), 172, 173, 174, 175, 176, 177, 178,
13 179, 180, 181, 182, 228, 229, 230, 231, 233, 234, 235, 236, 237, 239, 240, 241, 242, 243, and 244.

16 3. Defendants lack sufficient knowledge or information to admit or deny the allegations in
17 the following Paragraphs of the First Amended Complaint: 3 (except Defendants admit that a non-
18 party with a username “mikerow” appears to have made a social media post), 10, 11 (except that one
19 of the Defendants appears to have made an online forum post), 13, 27, 28, 29, 30, 31, 37, 38, 39, 40,
20 41, 42, 43, 44, 45, 46, 47, 49, 66, 67, 75, 76, 83, 84, 85, 90, 103, 132, 140, 146, 147, 148, 149, 151,
21 154, 157, 158, 183, 184, 185, 186, 187, 188, 189, and 190.

22 4. The following paragraph of the First Amended Complaint are moot following the
23 Court's Order granting in part the Defendants' motion to dismiss: 197-226, and 245-256.
24

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE:

27 5. Plaintiff is barred from relief because the Complaint and each claim purported to be
28 alleged therein, fail to allege facts sufficient to state a plausible claim for relief against the Defendants.

SECOND AFFIRMATIVE DEFENSE:

6. Plaintiff was at fault in purchasing cryptocurrency (Nano Coins) on an unregulated
 2 foreign exchange and/or maintaining funds in account on that exchange relative to the incident
 3 described in plaintiff's complaint. Such fault caused or contributed to the damages complained of in
 4 this case.

THIRD AFFIRMATIVE DEFENSE:

7. Plaintiff failed to take reasonable steps to minimize or prevent the damages he claims to
 8 have suffered.

FOURTH AFFIRMATIVE DEFENSE:

10. Plaintiff knew about the risk of transacting in cryptocurrency, especially on an
 11 unregulated foreign exchange, and voluntarily undertook the risk that led to the injuries complained of
 12 in this case.

FIFTH AFFIRMATIVE DEFENSE:

14. People or entities other than the Defendants, including but not limited to Francesco
 15 Firano, BG Services, S.R.L., BitGrail S.R.L., and/or Webcoin Solutions, caused or contributed to the
 16 damages Plaintiff claims to have suffered. Therefore any award made in favor of Plaintiff in this case
 17 must be reduced by an amount equal to the percentage of the fault of others in causing or contributing
 18 to the damages as alleged in the complaint. Moreover, the Defendants are entitled to a set off if
 19 additional investigation uncovers wrongful conduct and money owed to the Defendants.

SIXTH AFFIRMATIVE DEFENSE

23. Defendants other than Hieusys, LLC, Colin LeMahieu, Mica Busch, Troy Retzer, and
 24 Zack Shapiro caused or contributed to the damages Plaintiff claims to have suffered. Therefore any
 25 award made in favor of Plaintiff must be divided between the defendants so that each pays only his or
 26 its fair share in relationship to his or its amount of fault.

SEVENTH AFFIRMATIVE DEFENSE

11. The Defendants believe, based on reliable information, that current law prohibits Plaintiff's claims against the Defendants.

EIGHTH AFFIRMATIVE DEFENSE

12. Plaintiff waited too long to file this lawsuit, making it difficult or impossible for the Defendants to find witnesses or evidence to defend the case.

NINTH AFFIRMATIVE DEFENSE

13. The damages Plaintiff claims to have suffered were caused or made worse by an event that occurred after the accident described in the complaint, which constitutes an intervening or supervening cause.

TENTH AFFIRMATIVE DEFENSE

14. The damages the Plaintiff claims to have suffered were entirely or almost entirely caused by the acts or omissions of actors other than the Defendants, including but not limited to Francesco Firano, BG Services, S.R.L., BitGrail S.R.L., and/or Webcoin Solutions, and thus the Defendants are not responsible for Plaintiff's claimed damages.

The Defendants expressly reserve the right to amend this Answer and Affirmative Defenses to add or remove defenses and Affirmative Defenses as the case progresses and discovery is taken.

The Defendants hereby demands a jury trial on all matters upon which a jury may pass.

WHEREFORE Defendants respectfully asks this Court for the following relief:

- A. That the Complaint be dismissed in its entirety with prejudice;
 - B. That Defendants be awarded attorney's fees and costs; and
 - C. For such other and further relief as this Court may deem just and proper.

1 Date: October 25, 2019

Respectfully submitted,

2
3 /s/ Peter Scoolidge
4 Peter Scoolidge

Peter Fox

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6 **LLP**

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